

राजस्थान सरकार
निदेशालय कोष एवं लेखा, राजस्थान, जयपुर

क्रमांक :- एफ.1(ई)(1)(6)ख.ले/अलेसे-III | 10876-77

दिनांक :- 20/10/2015

अधिशायी अभियन्ता,
खण्ड द्वितीय, जल संसाधन विभाग
चित्तौड़गढ़।

विषय :- खण्डीय लेखाकार पद से कार्यमुक्त करने बाबत।

महोदय,

विषयान्तर्गत लेख है कि विभागीय आदेश दिनांक 30.06.2015 द्वारा आपके कार्यालय में पदस्थापित खण्डीय लेखाकार का स्थानान्तरण किया गया था। उक्त स्थानान्तरण आदेश पर संबंधित कार्मिक द्वारा माननीय उच्च न्यायालय में याचिका संख्या 8952/2015 दायर कर स्थगन प्राप्त कर लिया था। अब माननीय उच्च न्यायालय के आदेश दिनांक 29.09.2015 के द्वारा स्थगन आदेश दिनांक 10.07.2015 को निरस्त करते हुए याचिका खारिज कर दी गई है। (सुलभ संदर्भ हेतु प्रति संलग्न है)।

अतः कृपया अब स्थानान्तरित खण्डीय लेखाकार को अविलम्ब कार्यमुक्त कर नवीन पदस्थापन स्थान पर कार्यग्रहण करने हेतु निर्देश प्रदान कर इस विभाग को विभागीय ई-मेल "jacct.dta@rajasthan.gov.in" पर सूचित करावें।



(प्रदीप माथुर)

संयुक्त निदेशक (कार्मिक-III)

क्रमांक :- एफ.1(ई)(1)(6)ख.ले/अलेसे-III | 10876-77

दिनांक :- 20/10/2015

प्रतिलिपि :-

श्री शिव दयाल दुधानी, स.ले.अ. ग्रेड-I, कार्यालय अधिशायी अभियन्ता, खण्ड द्वितीय, जल संसाधन विभाग चित्तौड़गढ़ को प्रेषित कर निर्देश दिये जाते हैं कि अविलम्ब नवपदस्थापन कार्यालय में कार्यग्रहण कर इस विभाग को "jacct.dta@rajasthan.gov.in" पर सूचित करावें।



संयुक्त निदेशक (कार्मिक-III)

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR**

ORDER

1. S.B. Civil Writ Petition No.12745/2014
Anop Singh Rathore & Ors. Vs. State of Rajasthan & Anr.
2. S.B. Civil Writ Petition No.8952/2015
Vishnu Kumar Goyal & Ors. Vs. State of Rajasthan & Anr.
3. S.B. Civil Writ Petition No.9553/2015
Prakash Kumar Sharma & Ors. Vs. State of Rajasthan & Anr.
4. S.B. Civil Writ Petition No.9368/2015
Bhanwar Singh Mehla Vs. State of Rajasthan & Anr.
5. S.B. Civil Writ Petition No.8972/2015
Prem Prakash Niranjane & Ors. Vs. State of Rajasthan & Anr.

Date of Order :: 29th September, 2015

HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

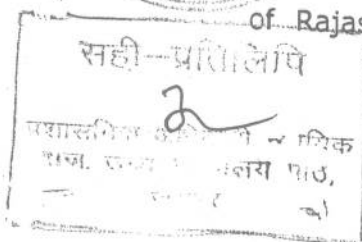
Mr. R.P. Garg for petitioners.
Mr. Jatin Agarwal for Mr. Rajendra Prasad, Additional Advocate General, for State-respondents.
Mr. Lokesh Sharma and Mr. Rakesh Kumar Sharma for respondents.

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BY THE COURT:

The Instant batch of writ applications, with marginal variation of facts, which are inessential to be recorded, in substance raise identical issue, and therefore, have been taken up together for adjudication by this common order. Though the matter comes upon an interim application under Article 226(3) of the Constitution of India; but having regard to the nature of the controversy, the matter has been taken up for final disposal at this stage, with the consent of the learned counsel for the parties.

2. For the purpose of convenience, the facts of S.B. Civil Writ Petition Number 8952 of 2015 (Vishnu Kumar Goyal & Ors. v. State of Rajasthan & Anr.) are taken note of. The petitioners while



assailing the impugned orders dated 30th June, 2015, have prayed for the following relief(s):-

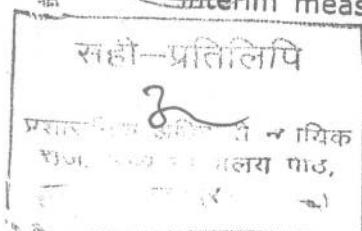
"(i) to issue any order or writ of any nature for quashing of the impugned orders dated 30.6.2015 (Annexure-7 & 8) and the non-petitioners may kindly be directed to allow the petitioners to function as Divisional Accountants.

(ii) to issue any order of writ of any nature directing the non-petitioners to treat the petitioners as regularly recruitee Divisional Accountants and the petitioners may kindly be allowed to function as Divisional Accountants.

(iii) Any other order or direction which this Hon'ble Court deems expedient in the facts and circumstances of the case, may kindly be passed in favour of the petitioners.

(iv) Cost of the writ petition may kindly be also awarded in favour of the petitioners."

3. It is pleaded case of the petitioners that they were eligible for appointment on the post of 'Divisional Accountant'. Furthermore, a Division Bench of this Court vide order dated 10th August, 2010, permitted the State-respondents to fill up 252 posts of 'Divisional Accountant', which were lying vacant and as a consequence thereof, the petitioners were accorded appointment on the post of 'Divisional Accountant' vide order dated 13th October, 2010. It is further contended that subsequent to their appointment to the post of Divisional Accountants, the petitioners were subjected to required training as contemplated in the Notification dated 20th February, 2004, which is pending scrutiny before this Court. However, as an interim measure, the State-respondents were permitted to fill up

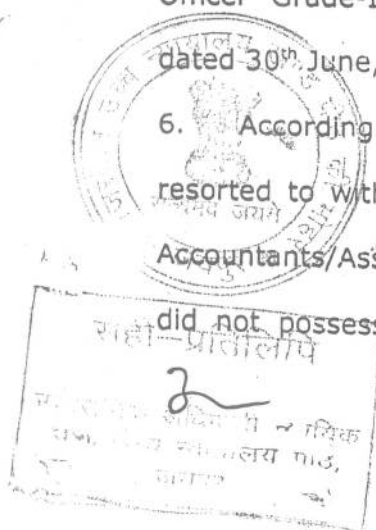


the post of Divisional Accountants, as would be evident from the order dated 10th August, 2010, passed in D.B. Civil Special Appeal (Writ) No.299 of 2010 (Sita Ram Sharma & Ors. v. Tilak Raj & Ors.). The petitioners are aggrieved of the Impugned orders dated 30th June, 2015, whereby their cadre has been changed from that of 'Divisional Accountant' to 'Assistant Accounts Officer Grade-II and Grade-I', without affording an opportunity of hearing or any notice. Further, the controversy with reference to the Notification dated 20th February, 2004, is yet to be adjudicated upon by this Court.

4. Learned counsel for the petitioners, Mr. R.P. Garg, reiterating the pleaded facts and grounds of the writ applications, asserted that the petitioners, who were accorded appointment to the cadre of 'Divisional Accountant' and were also subjected to the required training, they have been reverted to the cadre of 'Assistant Accounts Officer Grade-II and Grade-I'; and therefore, the action is illegal, arbitrary and unreasonable.

5. Further, the petitioners who were appointed as 'Divisional Accountant' after due selection, as they were found fully eligible as per the terms and conditions of the Notification dated 20th February, 2004; could not have been reverted/treated as 'Assistant Accounts Officer Grade-II and Grade-I'; therefore, the impugned orders dated 30th June, 2015, deserves to be quashed and set aside.

6. According to the learned counsel, the action has been resorted to with a view to accommodate and adjust other 'Junior Accountants/Assistant Accounts Officers Grade-II and Grade-I', who did not possess the requisite experience of two years of Works

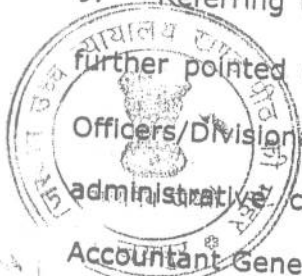


Department, Accounts and the Divisional Accountants; working under the provisions of GF&AR and PWF&AR Rules. The action is with an oblique motive to accommodate the aforesaid employees, who are sought to be posted against their posts and thus, the action of the State-respondents is not only malafide, but is also violative of mandate of Article 14, 16 and 21 of the Constitution of India.

C. 7. Moreover, 60 to 80 posts of Divisional Accountants, are still lying vacant and there are no qualified and experienced hands for appointment to the post of 'Divisional Accountant' other than the petitioners, who have already been accorded appointment to the post of Divisional Accountants and have also undergone the required training, and thus, they stood regularized under the terms and conditions of the Notification dated 20th February, 2004.

8. In response to the notice of the writ applications, the State-respondents have filed their counter-affidavit raising preliminary objections as to the very maintainability of the writ applications for want of territorial jurisdiction. It is further pleaded that a bare perusal of the impugned orders would reveal that the orders are, in fact, transfer orders repatriating the petitioners to their parent department from the post of 'Divisional Accountant'.

9. Referring to the Notification dated 20th February, 2004, it is further pointed out that the existing cadre of 'Divisional Accounts Officers/Divisional Accountants', has been transferred to the administrative control of the State of Rajasthan from that of Accountant General (A&E), Government of India.



सही-प्रतिलिपि

प्रसारित किया जावे - तयिक

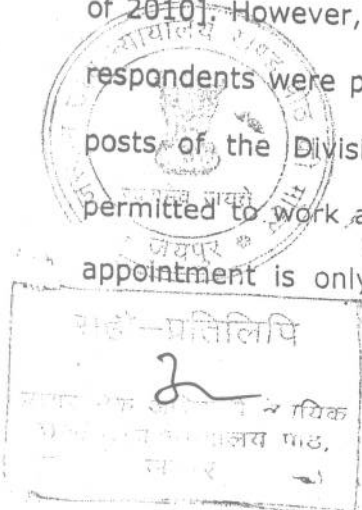
श्री. उच्च माध्यमिक शिक्षा विभाग, राठ,

तारीख २

10. The State-respondents have further specifically pleaded that the State-respondents were permitted, as an interim measure, to fill up 252 vacant posts, as would be evident from the order dated 10th August, 2010. Therefore, the mere fact of posting of the petitioners on the post of 'Divisional Accountant' on deputation initially, and thereafter, continued as permitted by the interim order of the Division Bench of this Court, does not mean that the petitioners have been appointed to the post of 'Divisional Accountant', in accordance with the recruitment procedure as contemplated under the Notification dated 20th February, 2004.

11. The learned counsel appearing on behalf of the State-respondents, Mr. Jatin Agarwal, reiterating the stand in the counter-affidavit emphasized that the post of 'Divisional Accountant', is not encadred under the Rajasthan Subordinate Accountant Service Rules, 1963 (for short 'the Rules of 1963'), and new Service Rules are yet to be framed.

12. It is further contended that the Notification dated 20th February, 2004, was published in the official gazette for the purpose of transfer of 'Divisional Accountant' cadre to the State Government. Further, the Notification is the subject matter of Writ Application/Special Appeal [D.B. Civil Special Appeal (Writ) No.299 of 2010]. However, vide order dated 10th August, 2010, the State-respondents were permitted to fill up 252 vacant posts out of 354 posts of the Divisional Accountants. The petitioners were only permitted to work as Divisional Accountants, but their substantive appointment is only to the post of 'Junior Accountants/Assistant



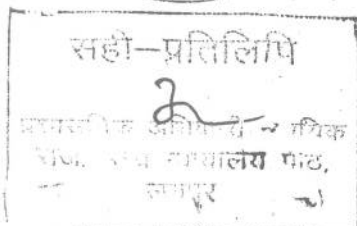
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Accounts Officers Grade-II' and they still continue to be governed by the Rules of 1963.

13. In order to meet out the day-to-day requirement of the post of the 'Divisional Accountant', the petitioners were sent on deputation after they had consented to go on deputation. The petitioners did not undergo any recruitment process for appointment to the post of 'Divisional Accountant', in accordance with the terms and conditions as contemplated under the Notification dated 20th February, 2004.

14. Repelling the contention that the petitioners have undergone required training after appointment on the post of 'Divisional Accountant', the learned counsel would submit that a bare perusal of the instructions issued by the State Government on 11th October, 2010 (Annexure-R/5), would reveal that the petitioners, who are substantively holding the post of 'Junior Accountant' while working on the post of 'Divisional Accountant', were accorded training by way of a 'Refresher Course'. The training programme, wherein some of the petitioners were declared successful vide order dated 28th March, 2012 (Annexure-9), cannot lead to the conclusion that the petitioners have undergone the training consequent upon their appointment to the post of 'Divisional Accountant'.

15. Mr. Rakesh Sharma, learned counsel appearing on behalf of the private respondent number 3 (Ajay Kumar Singh), referring to the impugned order dated 30th June, 2015, asserted that the impugned order is an order of transfer wherein name of the respondent number 3 appears at serial number 95, who has been

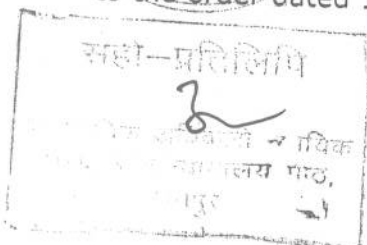


accorded transfer/posting in place of the petitioner - Vishnu Lal Sharma.

16. It is further contended that the transfers, which have been effected on request, have been indicated with an asterisk (*) mark as has been indicated at serial number 49. Thus, the petitioners, who have been accorded posting/ transfer, have filed the instant writ application suppressing the material facts and on a misconceived assumption without having undergone any recruitment process for the post of 'Divisional Accountant'.

17. Further, name of the petitioner - Vishnu Lal Sharma, has also indicated at serial number 35 in the order of even date, which has been placed on record as Annexure-3, along with an application under Article 226(3) of the Constitution of India, with an asterisk (*) mark, which unmistakably reflects that the petitioner - Vishnu Lal Sharma, was accorded transfer/posting on his own request against the vacant post. In view of the ex-parte interim order granted by this Court, the respondent number 3, was not allowed posting/transfer on his request.

18. Mr. Lokesh Sharma, learned counsel appearing on behalf of the private respondents contended that the writ petitions preferred are not maintainable for availability of alternative and efficacious remedy before the Rajasthan Civil Services Appellate Tribunal. Learned counsel further urged that a Coordinate Bench of this Court vide order dated 23rd March, 2010, has already adjudicated upon the controversy with the directions indicated therein. While referring to the order dated 10th August, 2010, passed by a Division Bench of



this Court in D.B. Civil Special Appeal (Writ) No.299 of 2010, he endorsed the stand of the State-respondents.

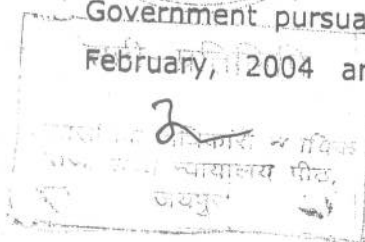
19. I have heard the learned counsel for the parties and with their assistance, perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

20. A Coordinate Bench of this Court in S.B. Civil Writ Petition No.15296 of 2009 (Tilak Raj & Ors. v. Union of India & Ors.), while disposing of the writ petition made the following operating directions:-

"(a) The petitioners were appointed on deputation for a period of 3 years and rules stipulate maximum period of deputation to be of 5 years, thus petitioners cannot claim a right to continue on the post pursuant to the order of appointment on deputation.

(b) Those who are appointed by the Comptroller & Audit General of India on regular basis, their service condition would not be affected pursuant to the notification dated 20th of February, 2004 till the matters are finally decided by the Tribunal and High Court. Direction in this para will include not only those who are litigants before the Tribunal and High Court but all those regularly appointed in the cadre by the Comptroller & Audit General of India and are working in State of Rajasthan till the final outcome of pending writ petition/original application. This will take safeguard of interim order passed in favour of regular appointees by the Government of India.

(c) Excluding the number of posts occupied by regularly appointees by the Government of India remaining posts can be filled up by the State Government pursuant to the notification dated 20th of February, 2004 and till such posts are filled up,



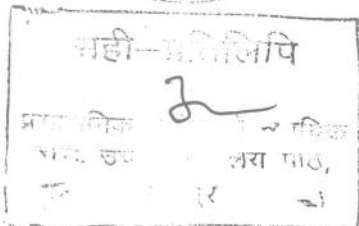
arrangement as provided in the notification dated 20th of February, 2004 would be given effect to. It would be only for intervening period till notification is actually implemented. The regular arrangement by the State Government would however be carried out at the earliest and within the time frame.

(d) The cadre would be controlled by the respective authorities as indicated above till the original application/writ petition filed by the regular appointees of the Central Government are decided."

21. From a glance of the order, as extracted herein above, it is evident that the petitioners were posted on the post of 'Divisional Accountant' on deputation, as an interim arrangement till the Notification is given actual effect. Since the period of deputation cannot exceed more than five years, necessary orders were made by the State Government particularly in the backdrop of the order passed by the Division Bench of this Court in D.B. Civil Special Appeal (Writ) No.299 of 2010; dated 10th August, 2010, permitting the State Government to fill up only 252 posts of the Divisional Accountants as an interim arrangement with further stipulation that the arrangement would be subject to final decision of the writ petition.

22. At this stage, it will be relevant to consider the operative direction of the order dated 10th August, 2010, made by the Division Bench of this Court in D.B. Civil Special Appeal (Writ) No.299 of 2010, which reads thus:-

"We have considered the submissions of learned counsel for both the parties. Both the learned counsel for the parties have argued the case at length. However,



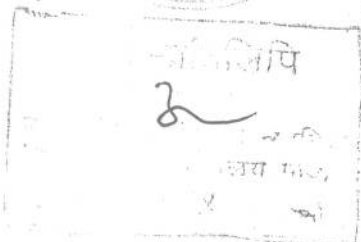
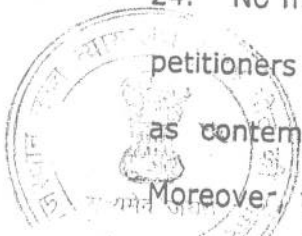
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after considering all the facts and circumstances of the case, we find that the interest of writ petitioners and similarly, situated persons, who have not approached the court has already been safeguarded. Learned Advocate General himself contended that they may be allowed to fill up only 252 posts of Divisional Accountant, which are lying vacant. The disposal of the case may take some more time, therefore, it is not proper in the interest of justice to keep 252 posts of Divisional Accountant vacant. The writ petitioners, who are already working on the post of Divisional Accountant will not be disturbed in any manner. Whatever posts are filled up by the State Government will be subject to final decision of the writ petition.

Consequently, both the applications are disposed of. The stay order dated 19th May, 2010 passed by this Court is modified to the extent that State Government will be free to fill up 252 posts of Divisional Accountant, however, the same will be subject to the final decision of the writ petition."

23. From a bare glance of the orders dated 13th October, 2010, which have been referred to and relied upon as appointment orders to the post of the 'Divisional Accountant', it would be evident that the petitioners, who were earlier working on deputation, have been continued in view of the above-mentioned order dated 10th August, 2010.

24. No material has been placed to substantiate the fact that the petitioners have ever undergone the process of regular recruitment as contemplated under Notification dated 20th February, 2004. Moreover, the State-respondents have specifically pleaded in their counter-affidavit that no rules have been framed till date for the



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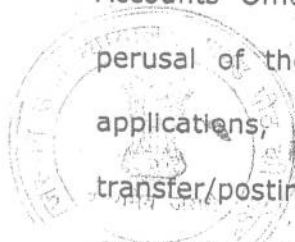
cadre of 'Divisional Accountant' and the petitioners have not undergone any regular recruitment process as contemplated under Notification dated 20th February, 2004, since the matter is pending adjudication before this Court.

25. The preliminary objection raised on behalf of the private respondents as to the availability of the alternative and efficacious remedy, is rejected having considered the singular facts of the case(s) at hand. From the materials available on record, it is also evident that 'Junior Accountants/Assistant Accounts Officers', the nomenclature has now been changed to 'Assistant Accounts Officer Grade-I & Grade-II', were given an option for 'deputation' to the post of 'Divisional Accountant'.

26. The State-respondents having been permitted by the Division Bench of this Court vide order dated 10th August, 2010; issued a circular inviting options from the eligible employees working as 'Junior Accountants/Assistant Accounts Officers' and those who have been found fit, they have been accorded posting orders.

27. In absence of any material substantiating the fact of regular appointment of the petitioners to the post of 'Divisional Accountant'; the alleged grievance raised with reference to their reversion to their parent cadre of 'Junior Accountants/Assistant Accounts Officer'; is absolutely misconceived. Moreover, a bare perusal of the orders, which have been impugned in the writ applications, would reveal that those are the orders of transfer/posting.

28. 'Deputation' is a tripartite contract and it cannot confer any


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legally enforceable right in favour of the petitioners for their alleged appointment to the post of 'Divisional Accountant' without they having undergone the regular recruitment process.

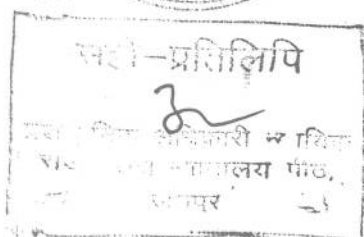
29. In S.B. Civil Writ Petition Number 12745 of 2014 (Anop Singh & Ors. v. State of Rajasthan & Ors.), the impugned order dated 26th October, 2014, has already been withdrawn by the State Government, and therefore, the writ petition has become infructuous. However, the learned counsel for the petitioners submits that out of eleven petitioners in all, petitioner No.2, 4, 5 and 8 - namely, Chanan Mal, Mahendra Singh, Ashok Kumar Dewra and Mewa Ram Hathiwal; joined in compliance of the order of transfer while submitting their representations for restoration of *status ante* in view of the Interim order already operating in their favour.

30. In view of the fact that the petitioners were never appointed to the post of Divisional Accountants, as a consequence of regular recruitment process; their prayer for a declaration to that effect and further prayer to allow them to continue on the post of Divisional Accountants, is devoid of any substance.

31. For the reasons and discussions herein above, the writ petitions are devoid of any substance and lacks in merit, and therefore, deserve to be dismissed.

32. Ordered accordingly.

33. In view of the final adjudication on the writ application, the stay applications stands closed. Interim orders made stand vacated.



34. However, in the facts and circumstances, there shall be no order as to costs.

sd/-
(VEERENDR SINGH SIRADHANA), J.

Sunil/P.A.

